

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

EDGAR AGUILAR,

Plaintiff,

v.

CDCR, et al.,

Defendants.

Case No. 1:23-cv-01512 JLT HBK (PC)

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS**

(Doc. 16)

Edgar Aguilar is a state prisoner proceeding pro se and *in forma pauperis* on his second amended complaint (“SAC”) filed pursuant to 42 U.S.C. § 1983. (Doc. 12.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 15, 2024, the assigned magistrate judge issued Findings and Recommendations to permit Plaintiff’s SAC to proceed on his claims against Defendant Taylor for Eighth Amendment deliberate medical indifference and intentional infliction of emotional distress but to dismiss the remaining claims and Defendants Alvarez and California Department of Corrections and Rehabilitation. (See Doc. 16.) Plaintiff timely filed Objections. (Doc. 17.) Pursuant to 28 U.S.C. § 636(b)(1)(C), the Court conducted a *de novo* review of this case. Having carefully reviewed the entire file, including the objections, the Court concludes the Findings and Recommendations to be supported by the record and by proper analysis.

1 Plaintiff contends that the magistrate judge erred in three ways. First, he disputes the  
2 finding that his SAC failed to state a deliberate medical indifference claim against Defendant  
3 Alvarez. (Doc. 17 at 2.) He cites CDCR's Health Care Department Operations Manual ("HC  
4 DOM"), which states in relevant part that "Patients may request medical attention for  
5 urgent/emergent health care needs from any CDCR employee. The employee shall, in all  
6 instances, notify health care staff." HC DOM Section 3.7.1(d)(1)(A). Plaintiff thus argues that  
7 Alvarez did not act reasonably when he alerted his supervisor, rather than medical staff, about  
8 Plaintiff's request to go "man down." (Doc. 17 at 2.) However, the mere fact that Defendant  
9 Alvarez may not have adhered to prison regulations concerning emergency medical care does not  
10 establish that he acted with deliberate indifference to Plaintiff's serious medical needs. *See*  
11 *Solomon v. Felker*, No. 2:08-cv-02544 JFM P, 2013 WL 5375538, at \*12 (E.D. Cal. Sept. 24,  
12 2013) ("Plaintiff's allegation that the defendants failed to adhere to the prison's own institutional  
13 policies and procedures does not, by itself" give rise to a constitutional violation); *Sandin v.*  
14 *Conner*, 515 U.S. 472, 481-82, (1995) (recognizing prison regulations are "primarily designed to  
15 guide correctional officials in the administration of a prison" and are "not designed to confer  
16 rights on inmates"); *Hovater v. Robinson*, 1 F.3d 1063, 1068 n. 4 (10th Cir. 1993) ("[A] failure to  
17 adhere to administrative regulations does not equate to a constitutional violation.").

18 The Findings and Recommendations correctly concluded that Alvarez's actions do not  
19 reflect deliberate indifference to Plaintiff's medical needs, even viewing the allegations in a light  
20 most favorable to Plaintiff. After first speaking with Plaintiff about his request to go "man down,"  
21 Alvarez told Plaintiff he would return in 30 minutes and did so, at which time Plaintiff provided  
22 more detail regarding his medical needs. (Doc. 12, ¶¶ 8, 20, 23-25.) Alvarez then passed the  
23 information on to his supervisor, Defendant Taylor, who came to check on Plaintiff  
24 approximately an hour later. (*Id.*, ¶¶ 27-28). Even if Alvarez did not follow the appropriate  
25 procedure in alerting his supervisor rather than medical staff, these facts reflect reasonable  
26 diligence in attending to Plaintiff's medical needs rather than deliberate indifference.

27 Plaintiff's second objection is to the finding that the SAC fails to allege a claim of failure  
28 to summon medical care against Defendants Taylor and Alvarez under Cal. Govt. Code § 845.6.

1 Plaintiff contends that he was suffering from “a serious and obvious medical need” triggering  
2 Defendants’ statutory duty to summon medical assistance. He points to *Zeilman v. County of*  
3 *Kern*, 168 Cal. App. 3d 1174 (1985), for support. In that case, plaintiff was in the process of  
4 being booked into the county jail and was using crutches due to a prior injury. *Id.* at 1177. After  
5 booking was complete, a booking deputy pointed Plaintiff to a chair and she attempted to walk to  
6 it using her crutches, but slipped and fell before she reached the chair and sustained injuries. *Id.*  
7 The trial court granted summary judgment for Defendants, but the California Court of Appeal  
8 reversed, finding inter alia that because, as plaintiff’s attorney observed, plaintiff was in an  
9 “aggitated [sic], emotional and weakened condition [at the time of the fall] which was easily  
10 apparent to [plaintiff’s attorney] and any other person in his vicinity” there was a triable issue  
11 whether plaintiff was experiencing a need for immediate medical attention, and that defendants’  
12 failure to provide it caused her subsequent injuries. *Id.* at 1178. *Zeilman* does not, however, stand  
13 for the proposition that pain alone constitutes a serious and obvious medical condition requiring  
14 immediate medical attention, and indeed other courts have found to the contrary. *See Kinney v.*  
15 *Contra Costa County*, 8 Cal. App. 3d 761, 770 (1970) (no liability for failure to provide medical  
16 care when prisoner complained of a bad headache and requested medication); *see also Whorton v.*  
17 *Cnty. of Calaveras*, 2003 WL 21696226, at \*7 (Cal. Ct. App. July 22, 2003) (unpublished) (“A  
18 prisoner with a serious and obvious medical condition requiring immediate care might include,  
19 for example, one who is bleeding profusely, unconscious, or unable to move.”).

20 Unlike the petitioner in *Zeilman*, Plaintiff alleges that he suffered from severe pain in his  
21 foot but does not cite any authority supporting his claim that this constitutes a serious and obvious  
22 injury for purposes of § 845.6. Nor does he allege that any injury or worsening of his condition  
23 resulted from Defendants’ failure to summon immediate medical care. Thus, the Findings and  
24 Recommendations correctly concluded that the SAC fails to allege facts establishing that Plaintiff  
25 experienced a need for immediate medical attention that triggered a duty to summon medical care  
26 under California Government Code § 845.6.

27 Plaintiff’s third objection is that the magistrate judge erred in finding that his claims  
28 against CDCR were barred by the Eleventh Amendment. Though CDCR may be held liable under

1 California Government Code § 845.6 for an employee's failure to summon medical care, this  
2 state law claim is not normally cognizable in federal court when brought against a state entity. *See*  
3 *Pennhurst v. State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100, (1984) (Eleventh Amendment  
4 immunity applies to state law claims brought in federal court). As numerous other cases have  
5 concluded, California has not consented to suit in federal court under California Government  
6 Code § 845.6; as a result, the CDCR is immune from damages claims in federal court under that  
7 statute. *Arellano v. Guldseth*, No. 20-CV-1633 TWR (RBM), 2020 WL 6381896, at \*5 (S.D. Cal.  
8 Oct. 30, 2020) (collecting cases); *see also Keel v. CDCR*, No. 1:05-CV-01298-AWI-LJO, 2006  
9 WL 1523121, at \*2 (E.D. Cal. May 30, 2006), *report and recommendation adopted sub nom.*  
10 *Keel v. CDCR*, 2006 WL 2501527 (E.D. Cal. Aug. 28, 2006) (Eleventh Amendment barred state  
11 law claims against CDCR notwithstanding the text of Cal. Gov. Code §§ 815.2(a) and 845.6).

12 Therefore, the Court ORDERS:

13 1. The Findings and Recommendations, filed on April 30, 2024, (Doc. 16), are

14 **ADOPTED IN FULL.**

15 2. Plaintiff shall be permitted to proceed on his claims against Defendant Taylor for  
16 Eighth Amendment deliberate medical indifference and state law intentional  
17 infliction of emotional distress, but the remaining claims and Defendants are

18 **DISMISSED.**

19 3. The matter is remanded to the assigned magistrate judge for further proceedings.

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21 IT IS SO ORDERED.

22 Dated: **June 15, 2024**

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UNITED STATES DISTRICT JUDGE